

BEFORE THE STATE BOARD OF EMBALMERS AND FUNERAL DIRECTORS  
STATE OF MISSOURI

<b>STATE BOARD OF EMBALMERS AND</b>	)	
<b>FUNERAL DIRECTORS,</b>	)	
	)	
Petitioner,	)	
	)	
v.	)	Case Number 10-1911 EM
	)	
<b>BRIAN WINTERS,</b>	)	
	)	
Respondent.	)	

FINDINGS OF FACT, CONCLUSIONS OF LAW AND DISCIPLINARY ORDER

At its regularly scheduled meeting on September 28, 2011 at approximately 3:20p.m., pursuant to notice duly served upon Respondent, the State Board of Embalmers and Funeral Directors (the "Board") took up for hearing to determine the level of discipline to impose upon the funeral director and embalmer licenses held by Respondent Brian Winters ("Winters"). The Board held the hearing at the Division of Professional Registration, 3605 Missouri Boulevard, Jefferson City, Missouri.

The Board appeared by and through its counsel, Stephanie White-Thorn, Assistant Attorney General. Winters appeared in person. Sharon Euler, Legal Counsel with the Division of Professional Registration served as hearing advisor to the Board.

On July 27, 2011, the Administrative Hearing Commission ("AHC") entered its Decision in the case of *State Board of Embalmers and Funeral Directors v. Brian Winters*, Case number 10-1911 EM (the "AHC Decision"). In the AHC Decision, the AHC found cause for the Board to impose discipline on Winters' funeral director and embalmer licenses pursuant to Section

333.330.2(3) and (12), RSMo<sup>1</sup>, due to Winters failure to disclose on his applications for licensure that he had his license revoked in Illinois and that he had pled guilty to federal criminal charges of mail fraud.

The Board has received the record of the proceedings before the AHC and each member of the Board has reviewed the record of the proceedings before the AHC and the AHC Decision. The record of the AHC is incorporated by reference into this order in its entirety. The Board takes judicial notice of its own file in this matter.

Pursuant to the provisions of Sections 621.110 and 333.330.3, RSMo, Winters received proper notice of the time, date, location and purpose of the hearing before the Board and was provided full opportunity to be heard on this matter.

After review of the record before the AHC and the AHC decision and hearing evidence and argument of counsel, the Board issues the following findings of fact, conclusions of law and disciplinary order:

#### **FINDINGS OF FACT**

1. The Board is an agency of the state of Missouri created and established pursuant to Section 333.151, RSMo, the purpose of executing and enforcing the provisions of Chapter 333, RSMo, and the portions of Chapter 436, RSMo, related to preneed funeral contracts.

2. Winters is an individual who has registered his address with the Board as 4001 Market Avenue, East St. Louis, IL 62207.

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<sup>1</sup> All statutory references are to the Revised Statutes of Missouri (2000), as supplemented, unless otherwise indicated.

3. The Board adopts and incorporates by reference to the Findings of Fact as set forth in the AHC Decision.

4. The Board properly served Winters with notice of the disciplinary hearing such that he was aware that he had the opportunity to be heard and to present any testimony or evidence for the Board to consider in determining the level of discipline to impose on his funeral director and embalmer licenses.

#### **CONCLUSIONS OF LAW**

5. Jurisdiction and venue are proper.

6. The Board adopts and incorporates by reference the Conclusions of Law as set forth in the AHC Decision.

7. The Board has determined that imposition of discipline on the funeral director and embalmer licenses held by Winters is necessary to ensure protection of the public.

#### **DISCIPLINARY ORDER**

Having fully considered all evidence before the Board and carefully reviewed the evidence and argument presented at hearing, the Board makes the following disciplinary order:

8. The funeral director license of Brian Winters is hereby **SUSPENDED** for a period of **ONE YEAR** beginning the effective date of this Order and, thereafter, shall immediately be placed on **PROBATION** for a period of **FIVE YEARS** beginning on the day after the last day of the license suspension (the "Disciplinary Period"), subject to the terms and conditions contained in this Order.

9. The embalmer license of Brian Winters is hereby placed on **PROBATION** for a period of **FIVE YEARS**, beginning the effective date of this Order, subject to the terms and conditions contained in this Order.

10. While each license is on probation, Winters shall comply with the following terms and conditions:

- a. Licensee shall keep the Board informed of Licensee's current work and home telephone numbers and addresses. Licensee shall notify the Board in writing within ten (10) business days of any change in this information. If Licensee utilizes e-mail, Licensee shall provide the Board with his current and active e-mail address;
- b. Licensee shall comply with all applicable provisions of Chapters 194, 333 and 436, RSMo, all Board regulations and all federal, state and local laws and regulations related to business operations in the funeral and death care industry including all insurance and security laws applicable to any insurance or annuity used to fund preneed funeral contracts;
- c. Licensee shall engage in no conduct that would give the Board cause to seek authority to discipline from the Administrative Hearing Commission;
- d. Licensee shall meet in person with the Board or any Board representative at any such time and place as required by the Board or its representative upon reasonable notice. Any such meetings shall be at the Board's discretion;
- e. Licensee shall submit written compliance reports to the Board no later than January 1 and July 1 of each year, but no compliance report shall be filed more

than 14 days before it is due. Each of these compliance reports shall state truthfully whether there has been full compliance with the terms and conditions of this Order for the previous six month period and shall fully explain any non-compliance. These compliance reports shall contain all other information required by this Order. Compliance reports may be submitted on a form provided by the Board, but failure to receive such a form from the Board shall not excuse the timely filing of any compliance report;

- f. Upon the request by the Board or its representative, Licensee shall immediately submit any and all records requested to show compliance with these terms and conditions;
- g. Licensee shall renew timely all licenses and/or registrations, shall pay timely all fees required for licensure/registration and shall meet all other requirements necessary to maintain all licenses and registrations issued by the Board current and active;
- h. Licensee shall accept and cooperate with unannounced visits from the Board, or its representatives, to monitor compliance with the terms and conditions of probation;
- i. Licensee shall not serve as the supervisor of any funeral director apprentice or embalmer practicum student or embalmer apprentice without the express written consent of the Board. If Licensee seeks to supervise an apprentice, Licensee shall submit a written request to the Board that includes the name and address of the potential apprentice and a description of Licensee's ability to

properly supervise an apprentice. No such apprenticeship shall commence until the Board has given its consent for Licensee to supervise the apprentice;

11. Upon the expiration of the Disciplinary Period and successful completion of the probation for each license, Licensee's license(s) shall be fully restored if all other requirements of the law have been satisfied; provided however, that in the event the Board determines that Licensee has violated any term or condition of this Order, the Board may, in its discretion, after an evidentiary hearing, vacate and set aside the discipline imposed herein and may suspend, revoke, or otherwise lawfully discipline Licensee's licenses.

12. The Board shall enter no order imposing further discipline on Licensee's license(s) without notice and an opportunity for hearing before the Board in accordance with the provisions of Chapter 536, RSMo.

13. If the Board determines that Licensee has violated a term or condition of this Order, and that violation would also be actionable in a proceeding before the Administrative Hearing Commission or in a circuit court, the Board may elect to pursue any lawful remedies or procedures afforded to it and is not bound by this Order in its determination of appropriate legal actions concerning such violation(s).

14. If any alleged violation of this Order occurs during the Disciplinary Period, the Board may choose to conduct a hearing on the alleged violation either during the Disciplinary Period, or as soon thereafter as a hearing can be held, to determine whether a violation of the terms and conditions of probation occurred and, if so, may impose further discipline on Licensee's license(s). The Board has continuing jurisdiction to hold a hearing determine if a violation of the terms and conditions of probation occurred.

15. This Order of the Board shall be maintained as an open and public record of the Board as provided in Chapters 333, 610 and 324, RSMo.

**IT IS SO ORDERED.**

Dated: 4/7/11

Sandy Sebastian

Sandy Sebastian  
Executive Director  
State Board of Embalmers and Funeral Directors

Before the  
Administrative Hearing Commission  
State of Missouri



STATE BOARD OF EMBALMERS  
AND FUNERAL DIRECTORS,

Petitioner,

vs.

BRIAN WINTERS,

Respondent.

No. 10-1911 EM

**DECISION**

We hold that Brian Winters is subject to discipline because he failed to disclose to the State Board of Embalmers and Funeral Directors ("the Board") information regarding his revoked license in Illinois. Winters is also subject to discipline because he failed to disclose to the Board that he pled guilty to mail fraud.

**Procedure**

On October 8, 2010, the Board filed a complaint seeking discipline against Winters. On April 14, 2011, we served Winters with our notice of complaint and notice of hearing. We held a hearing on June 23, 2011. Stephanie White Thorn, Assistant Attorney General, represented the Board. Although notified of the time and place of the hearing, Winters was not present for the hearing. Our reporter filed the transcript on June 30, 2011.



### **Findings of Fact**

1. Winters has held a Missouri funeral director's license since January 10, 2006. Winters has also held a Missouri embalmer's license since February 7, 2006. At all relevant times these licenses were and are current and active.
2. Between December 12, 1993, and August of 1995, Winters was an Illinois-licensed funeral director working for Russell Memorial Chapel located in East St. Louis, Illinois.
3. Between December 12, 1993, and August of 1995, Winters was part of a scheme to defraud purchasers of prearranged funeral plans, the federal government, and Russell Memorial Chapel of more than \$30,000.
4. Winters accomplished the fraud by selling pre-arranged funerals on behalf of Russell Memorial Chapel and then failing to pay over to Russell Memorial Chapel the funds he had received.
5. Winters also falsified and forged assignment forms that he mailed to insurance companies and the United States government. By mailing these fraudulent assignment forms, he caused others to mail to him funds to which he was not entitled.
6. On February 4, 1997, Winters pled guilty in the United States District Court, Southern District of Illinois, to the charge of mail fraud.
7. Winters was committed to the United States Bureau of Prisons for 16 months, followed by three years of supervised release.
8. Winters was assessed \$50.00 and ordered to pay restitution of \$36,854.62.
9. On August 26, 1998, Winters' Illinois funeral director/embalmer license was revoked. The basis for the discipline was Winters' felony conviction for mail fraud in the United States District Court, Southern District of Illinois.

10. On March 29, 2004, Winters applied for both an embalmer and funeral director license through the Board. In both of these applications Winters did not reveal that he had been subjected to discipline when asked. Winters also failed to reveal that he had been charged with and convicted of a felony when asked on the applications.

11. On March 23, 2006, Winters applied to renew both his embalmer and funeral director license through the Board. In both of these applications Winters did not reveal that he had been subject to discipline when asked. Winters also failed to reveal that he had been charged with and convicted of a felony when asked on the applications.

12. On April 1, 2008, Winters applied to renew both his embalmer and funeral director license through the Board. In both of these applications Winters did not reveal that he had been subject to discipline when asked. Winters also failed to reveal that he had been charged with and convicted of a felony when asked on the applications.

### **Conclusions of Law**

We have jurisdiction to hear the complaint.<sup>1</sup> The Board has the burden of proving that Winters has committed an act for which the law allows discipline.<sup>2</sup> The Board meets this burden by substantial evidence of probative value or by inferences reasonably drawn from the evidence.<sup>3</sup>

### **Cause for Discipline**

The complaint cites the provisions of § 333.330.2 allowing discipline for:

(3) Use of fraud, deception, misrepresentation...in securing any certificate of registration or authority, permit, or license issued under this chapter or in obtaining permission to take any examination given or required under this chapter;

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<sup>1</sup>Section 621.045. Statutory references are to RSMo Supp. 2010 unless otherwise noted.

<sup>2</sup>*Missouri Real Estate Comm'n v. Berger*, 764 S.W.2d 706, 711 (Mo. App., E.D. 1989).

<sup>3</sup>*Farnham v. Boone*, 431 S.W.2d 154 (Mo. 1968).

(12) Issuance of a certificate of registration or authority, permit, or license based upon a material mistake of fact [.]

Use of Fraud, Deception, Misrepresentation in Securing License - Subdivision (3)

Fraud is an intentional perversion of truth to induce another to act in reliance upon it.<sup>4</sup>

It necessarily includes dishonesty, which is a lack of integrity or a disposition to defraud or deceive.<sup>5</sup> Deception means an act designed to cheat someone by inducing their reliance on misrepresentation.<sup>6</sup> A misrepresentation is a falsehood or untruth made with the intent and purpose of deceit.<sup>7</sup>

On at least six occasions Winters failed to disclose to the Board his prior felony conviction, his prior attainment of licensure in the state of Illinois, and the subsequent discipline of his licenses in Illinois. Winters' failure to disclose these facts caused the Board to render him licenses to practice in Missouri. The Board necessarily relies on the statements of its applicants in determining their fitness to be licensed within the State. The candor and truthfulness of applicants is essential to the integrity of the licensing process. If the Board was made aware of Winters' conviction and discipline in Illinois prior to its issuing and repeated renewals of Winters' licenses, the Board would have had grounds for denial pursuant to § 333.121.2(2) and (8), RSMo 2000.

Therefore, we hold that Winters is subject to discipline under § 333.330.2(3) for fraud, deception, and misrepresentation.

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<sup>4</sup>*Hernandez v. State Bd. of Regis'n for Healing Arts*, 936 S.W.2d 894, 899 n.2 (Mo. App., W.D. 1997).

<sup>5</sup>MERRIAM-WEBSTER'S COLLEGIATE DICTIONARY 359 (11<sup>th</sup> ed. 2004).

<sup>6</sup>*State ex rel. Nixon v. Telco Directory Publishing*, 836 S.W.2d 596, 600 (Mo. banc 1993).

<sup>7</sup>*Id.* at 794.

Causing Issuance of a License based on a  
Material Mistake of Fact – Subdivision (12)

A mistake of fact is “an erroneous belief not in accord with the facts.”<sup>8</sup> The dictionary definition of “material” is “of real importance or great consequence : SUBSTANTIAL . . . ESSENTIAL . . . requiring serious consideration by reason of having a certain or probable bearing[.]”<sup>9</sup> The initial license and subsequent renewal licenses were issued to Winters based on a material mistake of fact that Winters was never convicted of a felony nor had a license disciplined in another jurisdiction. Winters repeatedly failed to disclose to the Board his prior felony conviction and the discipline of his licenses in Illinois. Based on its belief that Winters’ statements on his applications were in fact true, the Board provided Winters with licensure.

We hold that Winters is subject to discipline under § 333.330.2(12) for causing issuance of a license based on a material mistake of fact.

**Summary**

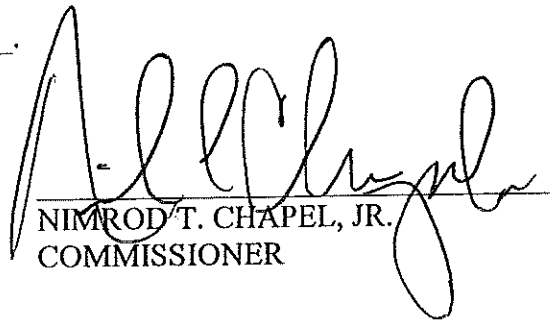
Winters is subject to discipline under § 333.330.2(3) and (12).

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<sup>8</sup>*In re Estate of Hysinger*, 785 S.W.2d 619, 624 (Mo. App., E.D. 1990).

<sup>9</sup>WEBSTER’S THIRD NEW INT’L DICTIONARY 1392 (unabr. 1986).

SO ORDERED on July 27, 2011.



NIMROD T. CHAPEL, JR.  
COMMISSIONER